

WILLIAM COAD.

MAY 16, 1910.—Ordered to be printed.

Mr. GILL, of Missouri, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 13186.]

The Committee on Claims, to whom was referred the bill (H. R. 13186) for the relief of William Coad, having considered the same, report thereon with a recommendation that it do not pass.

Appended hereto is a report from the War Department which is made a part of this report.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, January 8, 1910.

SIR: 1. Receipt by reference is acknowledged of a copy of H. R. 13186 (61st Cong., 2d sess.) for the relief in the amount of \$500 of William Coad for damages alleged to have been suffered by him by a collision in Oswego Harbor, New York, between scows owned by the Government of the United States and his boat, the *Nautilus*.

2. Under date of February 4, 1909, this office reported on H. R. 22655 (60th Cong., 2d sess.), which is identical with the bill herewith. A full investigation having been made at that time, and no additional facts being known, it is believed that a copy of that report, with its inclosures, will meet the needs of the Committee on Claims of the House of Representatives in connection with the pending bill.

3. Copies of the reports above referred to, together with the pending bill, are herewith.

Very respectfully,

The SECRETARY OF WAR.

W. L. MARSHALL,
Chief of Engineers, U. S. Army.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, February 4, 1909.

SIR: 1. Receipt is acknowledged, by reference, of a copy each of H. R. 22655, H. R. 22664, and H. R. 24069 (60th Cong., 2d sess.), for the relief, respectively, of William Coad, James Parker, and John T. Mott, for damages alleged to have been suffered by them on account of the breaking away from their moorings of a United

States derrick scow and a stone scow on the night of July 7, 1908, and colliding with their property.

2. To each of the above-mentioned bills is attached the usual request of the chairman of the Committee on Claims of the House of Representatives for all facts and information concerning the matter in the department, and also for an expression of opinion touching the merits of the claims.

3. Complying with the three requests together, I have to report that the claims of William Coad and James Parker were brought to the attention of the Secretary of War on October 3, 1908, by letter of James W. Sutton, a counselor at law of Oswego, N. Y. The matter having been referred to this office, and by this office to Col. W. L. Fisk, Corps of Engineers, Buffalo, N. Y., the officer in local charge of the district, the following correspondence, copies of which are herewith, resulted: Report of John C. Churchill, assistant engineer, Oswego, N. Y., of October 17, 1908; report of October 19, of Colonel Fisk; and letter of this office of October 21 to Mr. Sutton. Copies of the claims of Messrs. Coad and Parker and Mr. Sutton's letter also accompany.

4. From the reports of the persons in immediate charge it appears that the damages sustained by the claimants were much less than their several claims.

5. It also appears that the officers and agents of the United States were competent and experienced and that they exercised due care and diligence in securing the scows and in meeting the emergency when the unexpected storm arose.

6. In the view of this office the question of legal or moral liability of the United States does not turn on the possibility that such care and precautions might have been taken as would, under almost any contingency, have made a breaking loose of the scows impossible, but on whether or not, in the light of conditions existing at the time, such precautions were taken and such care exercised as could reasonably be expected of competent and experienced persons.

7. Such precautions having been taken and such care exercised, it is understood that under the law the United States is not liable for any damages resulting from such breaking loose, which is regarded as an inevitable accident.

Very respectfully,

W. L. MARSHALL,
Chief of Engineers, U. S. Army.

The SECRETARY OF WAR.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, October 21, 1908.

SIR: Your letter of October 3, 1908, inclosing affidavits of William Coad and James Parker in connection with damages alleged to have been sustained by them as a result of two government scows breaking away from their moorings and colliding with the boats *Nautilus* and *Teresa*, has been received by and reported upon to this office.

While the contention of the owners that the boats were damaged by the negligence of the "Department of War" is not admitted, the report of the government officer in charge of the district wherein the collision occurred, indicating an inevitable accident, the law covering which being that each party shall bear his own loss, even in the event that a liability could be shown on the part of the United States, the executive officers of the Government would be without authority to make settlement, and any redress would have to be obtained through Congress.

By direction of the Chief of Engineers:

Very respectfully,

W. J. BARDEN,
Captain, Corps of Engineers.

Mr. JAMES W. SUTTON,
Counselor at Law, 4-5 Grant Block, Oswego, N. Y.

[Second indorsement.]

U. S. ENGINEER OFFICE,
Buffalo, N. Y., October 19, 1908.

1. Respectfully returned to the Chief of Engineers, U. S. Army, with report in detail from John C. Churchill, assistant engineer under this office, who had charge of the scows complained of.

2. It seems from this report that a sudden storm came up at Oswego on the night of July 7, 1908, and tore the U. S. derrick scow and stone scow away from their moorings on the inside of the outer breakwater; that no warning of an impending

storm had been given by the Weather Bureau, and only the usual precautions for the safety of the scows had been taken, as no unusual weather was expected, there being no indications of a storm.

3. In drifting down the harbor after being torn from their moorings they struck and tore loose the yachts owned by the claimants, and damaged them as stated.

4. The damage to the *Nautilus*, owned by William Coad, is estimated by Mr. Churchill at \$190, and to the *Teresa*, owned by James Parker, at \$70.

W. L. FISK,
Colonel, Corps of Engineers.

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
Oswego, N. Y., October 17, 1908.

COLONEL: Referring to your letter of October 9, 1908 (Osw., 37/8), I have the honor to return herewith the letter of James W. Sutton and the claims of William Coad and James Parker for damages to their yachts, caused by two of the United States scows colliding with them July 8, 1908, and would report upon same as follows:

The boats by which the damage was done consisted of a derrick scow 150 by 35 by 9 feet and a stone scow, partially loaded, 130 by 35 by 9 feet.

During the afternoon of July 7 the derrick scow had the stone scow alongside of her and was unloading capping stone from her. At the close of work the scows were brought inside the harbor and moored on the inside of the outer breakwater, a short distance below the breach where they were at work. The scows were moored alongside of each other, which, I believe, was an error in judgment on the part of the overseer in charge, Mr. A. H. Preston, because, had they been moored alongside the breakwater singly, I do not believe that they would have broken away.

Mr. Preston told me that the reason he left the scows together was that there was no indication of bad weather and it would save so much time in getting in position upon the work the next morning. When we work but eight hours per day this quick getting into position makes a great difference in the amount accomplished.

The derrick scow was fastened to mooring posts by 4½-inch lines, there being five parts leading to posts at each end. There had been a little wind down the lake in the afternoon, but this had died away, and the wind had gone back to the south so that it was not thought by any one upon the work that there would be much wind that night. There was also no warning of it given by the Weather Bureau.

We had on board the derrick scow that night William Lennan, an experienced sailor. About midnight the wind began to blow hard down the lake, and about 2 o'clock Lennan said it was blowing between 20 and 25 miles an hour.

He said that he kept adjusting the lines in the effort to hold the boats at the breakwater, but the surge became so heavy between 2.30 and 3 o'clock that the scows broke away from the breakwater and were carried by the wind down the harbor. In going down the harbor they tore from their moorings four yachts, the *Nautilus*, owned by William Coad; the *Teresa*, owned by James Parker; the *Papoose*, owned by John T. Mott; and a yacht from Charlotte called the *Veritas* and owned by Charles B. Bechtold and John J. McInerney.

The *Nautilus*, owned by Coad, was carried down with the scows and was caught between them and the steam barge *Avon*, against which the scows landed.

Neither of the other yachts were caught between the scows and the steam barge, but the *Teresa*, owned by Mr. Parker, and the *Papoose*, owned by John T. Mott, were injured by striking and rubbing against the scows and the barges near where they landed.

The *Nautilus* sustained the greatest damage, but it could hardly be said that she is a total loss. She is about 25 feet long, and was built about twelve years ago. The damage done was above the water line, mainly to the rails, deck, and cabin. She was dismantled by her owner, and has not been used since. I have been aboard of her lately and examined her condition, and have had an estimate made of the cost of putting her in good condition again.

She leaks very little and her planking and frames in her hull generally are all right. Below the upper two or three seams the putty, even, is not disturbed. A liberal estimate of the cost of putting this boat in as good, or even better, condition than she was before the accident would be \$190.

The damage done to the *Teresa*, owned by James Parker, was somewhat as described in his claim. Parker repaired his boat, and has been sailing her all summer. I had an examination of this boat made October 15, 1908, by Messrs. A. H. Preston and

George W. Goble, overseers. They report that the covering board is not badly split and bruised. This is the largest single item of damage claimed.

They made an itemized estimate of the cost of putting this boat in good condition again, and it foots up less than \$50. I would put it at \$70, allowing for any damage which may be discovered when she is hauled out.

In Mr. Parker's claim, he states that he was obliged to haul his boat out on account of the damage done. He told me October 16, 1908, that he did not do so, but meant to say that it would be necessary some time to do so in order to paint her. He will haul her out for the winter soon, and will do so regardless of the accident.

In answer to the claim that the boats were negligently and carelessly fastened, I would say that, in my opinion, this was not so; that they were carefully tied up, but the mistake was made of fastening the two boats together, which proved too much for the lines.

There were on the derrick scow two $\frac{5}{8}$ -inch steel cables, which might have been put out and should have been, but the man on the scows did not do so because he thought they should not be used in that way. The only advantage in having more than one man on the scows would, in my opinion, have been the having of two different judgments about the steel cables. Another man might have put them out, for there was plenty of time; but, on the other hand, he might have been of the same mind as the other, and the result would have been the same.

Respectfully,

JOHN C. CHURCHILL,
Assistant Engineer.

Col. W. L. Fisk,
Corps of Engineers, U. S. Army, Buffalo, N. Y.

To the honorable the Secretary of War and the Department of War of the United States of America:

The undersigned, William Coad, hereby respectfully presents to the Department of War, pursuant to statute made and provided, his claim for damages and states and alleges as follows:

That on or about the 8th day of July, and while the undersigned's boat, the *Nautilus*, was safely and securely anchored in the new harbor at Oswego, N. Y., the undersigned's boat was smashed, crushed, and broken, and almost totally destroyed by reason of the carelessness and negligence of the Department of War and without any negligence on the part of the undersigned, in allowing two scows to be negligently and carelessly tied near the break in the pier or breakwater known as the new pier in said harbor at Oswego, N. Y., and in negligently and carelessly having insufficient help to tend said two scows.

The two scows herein referred to were and now are owned and operated by the Department of War of the United States of America and were and now are engaged at work in the rebuilding or repair of said new pier at Oswego, N. Y., as deponent is informed and verily believes.

One of said scows is known as a derrick scow and the other is called a flat bottom or stone scow, and the size of said scows, as deponent is informed and verily believes, is 150 feet by 35 feet.

Said Department of War negligently and carelessly had both of said scows tied with a small and inadequate line for such large boats in a storm, and said Department of War, instead of having one man for each boat, had only one man to look after the two boats at nighttime when this collision occurred.

By reason of said Department of War's negligence and carelessness said scow or scows crashed, jammed, ran into, collided with, and crushed said undersigned's said boat and caused said boat to be and become a total loss and of no value.

The said scow or scows which crushed said undersigned's said boat and tore said boat from its anchorage pushed said boat down through the harbor at Oswego, N. Y., and against the barge *Avon*, said barge *Avon* being made fast to the Delaware, Lackawanna and Western Railroad Company's trestle, and said scow or scows pounded and kept pounding and bruising said boat for a long period of time against said barge *Avon* and before said boat, said *Nautilus*, could be taken away from between said scow and said barge said undersigned's said boat became so bruised and smashed and crushed as to make it of no use and to be totally destroyed by reason of said pounding and crushing of said scow, all to this claimant's loss and damage.

Said undersigned knows of his own knowledge, and is informed by competent ship carpenters, and verily believes that it will cost at least the sum of \$500 to restore

said boat to anywhere near its former condition, and this means the entire rebuilding of said boat.

By reason of all the foregoing and by reason of the negligence of the Department of War of the United States of America, through its officers, agents, and servants, and without any fault on the part of the undersigned, said accident was caused by said Department of War.

That by reason of the foregoing said undersigned is damaged in a large sum, in the sum of \$500.

Wherefore said undersigned prays that he be reimbursed for the damages sustained, and your petitioner will ever pray.

WILLIAM COAD,
Claimant.

STATE OF NEW YORK, *City and County of Oswego:*

William Coad, being duly sworn, deposes and says that he resides in the city of Oswego; that he is the claimant named in and who signed the foregoing statement of claim against the Department of War of the United States of America; that said statement is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WILLIAM COAD.

Subscribed and sworn to before me this 29th day of September, 1908.

JAMES W. SUTTON, *Notary Public.*



